A. I do.

Q. And you were then asked (Reading):

"Q. Did you ever discuss with either of those gentlemen the subject matter of this lawsuit—that is to say that there was a governmental investigation in progress?

"A. No."

Do you remember giving that—hearing that question and giving that answer?

A. I do.

Q. You were then asked (Reading):

"Q. Did you ever discuss with Mr. Mathews or Mr. Callahan this question of Townsend following Huck's prices on aircraft lockbolts?

"A. No. For the record, I never had a conversation that I recall with Mr. Callahan and I don't recall I even spoke to him. I never met him. I don't know that I said hello to him. It could be that I have. I don't recall ever having done it."

Do you remember that question and giving that answer?

A. I do.

Q. The next question (Reading):

[fol. 951] "Q. But you did know Mr. Mathews?

"A. Yes, I know Mr. Mathews."

Q. Do you remember that question and that answer?

A. I do.

Q. This deposition, to which I referred, was taken under oath, was it not, Mr. Roy?

A. That is correct.

Q. Mr. Mathews testified on the stand here yesterday, did he not?

A. That is correct.

Q. He has now been excused from this case, hasn't he?

A. To the best of my knowledge he has.

Mr. Pomeroy: Excuse me one moment, your Honor.

(Whereupon, a document was marked as Defendant's Exhibit FF, for Identification by the Reporter.)

Mr. Pomeroy: With the Court's permission I will show this to Government's Counsel.

Q. (By Mr. Pomeroy) Mr. Mathews—I am sorry. I beg your pardon. Earlier I showed you an Exhibit marked Defendants' EE, which you stated you could not recall having seen?

A. That's correct.

Q. I now show you another paper which has been marked Defendants' FF, and ask you to examine it and tell me whether or not that refreshes your recollection as ever having seen Exhibit EE?

A. It does.

[fol. 952] Q. Does it refresh your recollection so that you can now state that you have seen Exhibit EE or that you have not seen it?

A. I have seen it. It bears my initial at the top.

Q. Now, I show you Exhibit EE again, and I will ask you to read it, please, from the top on down.

A. This is a piece of correspondence without letterhead. It is addressed to R. E. Casner——

The Court: (Interposing) It is obviously a copy of a memo. Go ahead.

A. Yes, it is a carbon copy.

The Court: I say that merely because you said it was without letterhead.

A. Yes. Dated January 9, 1958, presumably to R. E. Casner. Maybe I better just read——

Mr. Haggerty: (Interposing) R. E. Casner?

Q. (Continuing) The top line is R. E. Casner?

A. R. E. Casner, yes. To:—second line, P. E. Horst: M. B.—third line—

Q. (Interposing) Excuse me. Who is Mr. Casner, if you know?

A. Mr. Casner had—he was an employee of Townsend.

Q. What kind of an employee? I mean what was his job?

A. He had two jobs while I was there.

Q. What was he on June 9, 1958?

A. I don't recall exactly which one he did have then.

The Court: Which two did he have?

[fol. 953] A. Mr. Casner was not in the same plant that I worked, and his exact title also I would not know, but I believe at one time, originally he was in charge of the manufacturing facility and later became a vice president in charge of a division.

The Court: All right, proceed.

Q. (By Mr. Pomeroy) Does that memorandum have some printed material on the right hand side?

A. Yes, it does.

Q. What is that?

A. Rubber stamped or—of some type or perhaps printed.

Q. Excuse me. May I glance at it? Is that a route, what you might call a route list or a form whereby you can route the memorandum internally?

A. It's not a type that was used in our plant but—I mean, I assume that's what it meant in this plant.

Q. All right. Who was Mr. Horst, by the way?

A. Mr. Horst has been identified previously, as, to the best of my knowledge, being assistant to the president Mr. Dickenson.

Q. All right, Now, go ahead, will you please?

A. Third line. (Reading):

"Price Policies-Lockbolt Products * * *".

Mr. Lipson: Your Honor, I will object to this document at this time on the ground that it is completely self-serving [fol. 954] and, therefore, has no probative value whatever to this case.

Mr. Pomeroy: May I give a copy to your Honor?

The Court: You know, I am beginning to wonder, if that were true, how many exhibits there would have been in the Government's case.

Mr. Lipson: Your Honor, the Government hasn't been responsible for offering any of them.

The Court: It may be received.

Q. (By Mr. Pomeroy) Will you continue, please, Mr. Roy?

A. Paragraph 1—this entire line is underscored (reading):

"Products covered by any price published by any producer: A, under 1 (reading, continuing):
"If we do not have an established price, it is our policy to quote the same price as our competition (our reason for doing this has nothing to do with our license * * *."

The Court: Our reason for doing this.

A. Oh. (Reading, continuing):

"* * * our reason for doing this * * *". Excuse me.

(Reading, continuing):

"* * * had nothing to do with our license or any other agreement; it is simply the same policy we try to follow in pricing products that are equal to our competitors in order to avoid chaotic market conditions.)"
[fol. 955] Paragraph 2. The heading is underscored.
"Products not covered by any published list:"

Subparagraph a.

"(Reading): If we develop the item: estimated selling price.
"Estimate selling price and quote in line with engineer's comparable products."

Subparagraph b.

"(Reading): If developed by our competitor."

One, as a subparagraph.

"(Reading): Undesirable quantities."

And under that (Reading):

"Use method 2 above or higher."

Subparagraph 2, under B.

"(Reading): Desirable quantities.
"Get special policy from one of the following:

P. E. Horst, F. R. Dickenson, R. E. Casner (if foregoing are not available)."

And as a lone paragraph at the bottom (Reading):

"Under no circumstances is there to be any collaboration on prices with our competition on this product or any other."

CC to: E. B. Buster (2).

Q. Thank you, sir.

Mr. Pomeroy: I offer Exhibit EE in evidence, if the [fol. 956] Court please.

Mr. Haggerty: It has been received. The Court admitted it before, Tom.

The Court: It has been received. I received it.

Mr. Pomeroy: Had you? I beg your pardon. Lapse of memory. That's all.

The Court: Any further cross examination?

Mr. Haggerty: No further. No cross here.

The Court: Any further direct?

Mr. Lipson: No further cross examination. I am sorry. No further direct examination.

The Court: May the witness be excused?

Mr. Lipson: I would recommend it, sir.

The Court: He comes too, from sunny California.

Mr. Pomeroy: He may be as far as I am concerned.

Mr. Haggerty: He may be.

The Court: All right, you are excused, sir.

(Whereupon, the witness was excused.)

The Court: We will take a recess.

(Whereupon, a short recess was taken.)

[fol. 957] AFTER RECESS

The Court: Our delay has been not unfruitful so—we are going to put in some exhibits—the Government is going to put in some exhibits and we will shorten some time.

OFFERS IN EVIDENCE

Mr. Lipson: Thank you, your Honor.

The Government offers exhibit previously identified as Plaintiff-Government Exhibit 103.

Mr. Pomeroy: Defendant Townsend and Dickenson have no objection.

Mr. Lipson: The document is headed:

"Townsend Company Sales Of Lockbolts 9/1/54 to 8/31/61. It is a tabulation——"

Mr. Pomeroy: (Interposing) Excuse me, Mr. Lipson, Mr. Haggerty hasn't spoken.

The Court: Mr. Haggerty did not offer it.

Mr. Haggerty: No objection.

The Court: No objection. All right.

Mr. Lipson: The tabulation of four columns. The first column is the date. The second column is aircraft. The third column is commercial. And the fourth column is total.

Then there is a bottom total figure for aircraft for the entire period; commercial and a final grand total.

[fol. 958] The total for the entire period, aircraft and commercial, $9,836,846.

The Court: That covers what period; total period?

Mr. Lipson: September 1, 1954 to August 31, 1961.

Government Exhibit marked for Identification 104; is there any objection? I offer the Exhibit.

Mr. Dickey: 104.

Mr. Pomeroy: If the Court please, we object to this document because of its date, February 10, 1956, indicating that it was written and received prior to the—beyond the period of limitations involved in this action.

The Court: In other words, this is the same objection you have heretofore had of documents of similar nature?

Mr. Pomeroy: Well I have had some other objections to some documents, but this is the only objection I have to this one, your Honor.

It is also within the period of two years after September 14, 1954.

The Court: That is what I had reference to. Mr. Haggerty, the same objection?

Mr. Haggerty: Same objection may it be noted, may it please the Court.

Mr. Hickey: And the further objection, too, that it is im-

[fol. 959] material and a Townsend internal document and not binding on Huck and Armour.

The Court: Because it is prior to the period, you mean?

Mr. Hickey: Because it is prior to the period, and then because, also, as I say, it is immaterial and it is by Townsend, internal document, and not binding on Armour or Huck.

The Court: I think—Or strike it. It may be received. And I think it is still controlled under those four cases that I have heretofore given you.

. . . . . .

[fol. 960] The Government now offers Government Exhibit 105, marked for Identification.

The Court: What is the date of that?

Mr. Lipson: The date is August 29, 1957. If there are no objections, I will read it.

The Court: I hear none.

[fols. 961-962] Mr. Pomeroy: I object only, your Honor, to the handwritten notations which a moment ago I——

The Court: (Interposing) That you cannot identify them, is that right?

Mr. Pomeroy: That's right.

The Court: It might be borne in mind that the Government does not know where they came from either.

Mr. Lipson: Your Honor, the handwritten notation came with the document when it was put in the Government's possession.

The Court: All right. As I recall, that which is important to you is not with respect to the handwritten part anyway, it has to do with some other matters.

Mr. Lipson: I think in this case, your Honor, the handwritten material would be of relevance, particularly the notation on the very bottom. That is in the middle section. If you don't have a copy, may I——

(Handing copy to the Court.)

Mr. Dickey: I object to it on behalf of Huck and Armour, on the grounds it is a Townsend internal document, and not binding upon either Huck or Armour. And that it is immaterial.

. . . . . .

[fol. 963] Mr. Lipson: The Government now offers Exhibit marked 106, for Identification.

The Court: What is the date of that?

Mr. Lipson: I am sorry. I offer Government Exhibit marked 106, for identification.

The Court: What is the date?

Mr. Lipson: December 30, 1957, your Honor.

Mr. Pomeroy: I have no objection.

Mr. Dickey: Object on the ground it is immaterial.

The Court: It may be received.

* * * * * * *

[fol. 964] The Government now offers Government Exhibit marked 107, for Identification.

The Court: The date?

Mr. Lipson: It is dated April 24, 1958, your Honor.

Mr. Dickey: We object to this on behalf of Huck and Armour on the ground that it is immaterial and also on [fol. 965] the ground that it is an internal Townsend document, not binding upon Huck or Armour.

The Court: It may be received. Although I sound curt, Ladies and Gentlemen of the Jury, we have gone over these before and I have considered them, and I do not want you to think I am doing something here that is without due thought.

Mr. Pomeroy: If I may, your Honor, I would like to have my objection, on the ground that the sender of the letter is described as a Mr. W. R. Wyckoff, and there is no showing that he is a person authorized to—an officer of the Townsend Company, in a position to make those binding statements.

The Court: That has a little different——

Mr. Lipson: (Interposing) Is this offered by Wyckoff, you say?

Mr. Haggerty: Yes. From W. R. Wyckoff.

Mr. Lipson: Your Honor, this is a document written on the format of a Townsend Company memorandum, addressed to known and identified officers of the Townsend Company, and it bears what purports to be a signature as well. If it is necessary, your Honor, to have Mr. Wyckoff identified as an agent of the Townsend Company, we can call the witness present in court at this time to do so.

The Court: These were given to you subject to the sub-
[fol. 966] poena for the books and records?

Mr. Lipson: No, your Honor. This particular document was made available, I believe, to the Federal Bureau of Identification when they requested certain voluntary compliance of the Townsend Company.

The Court: Well it may be received.

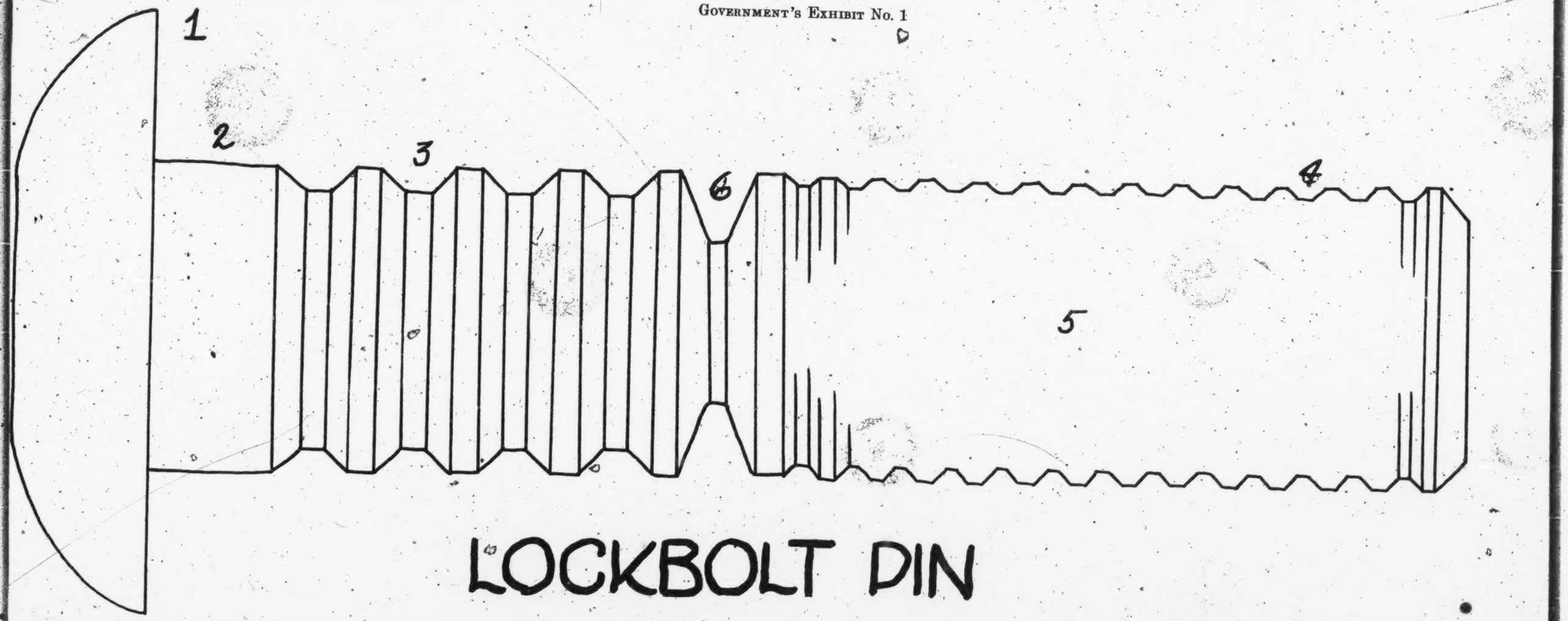
• • • • • • •

[fols. 967-1046] The Government rests, your Honor.

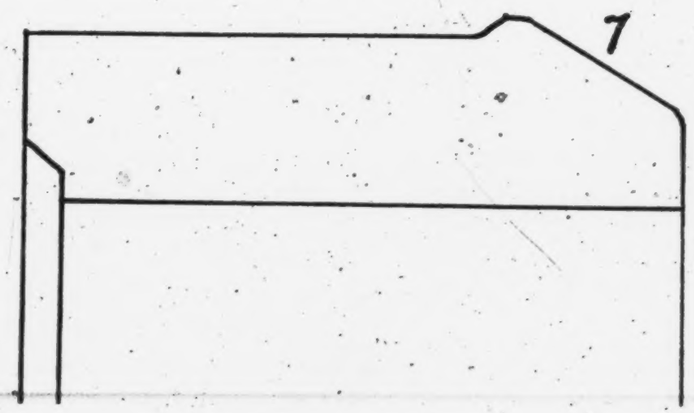
• • • • • • •

[fol. 1047] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 1



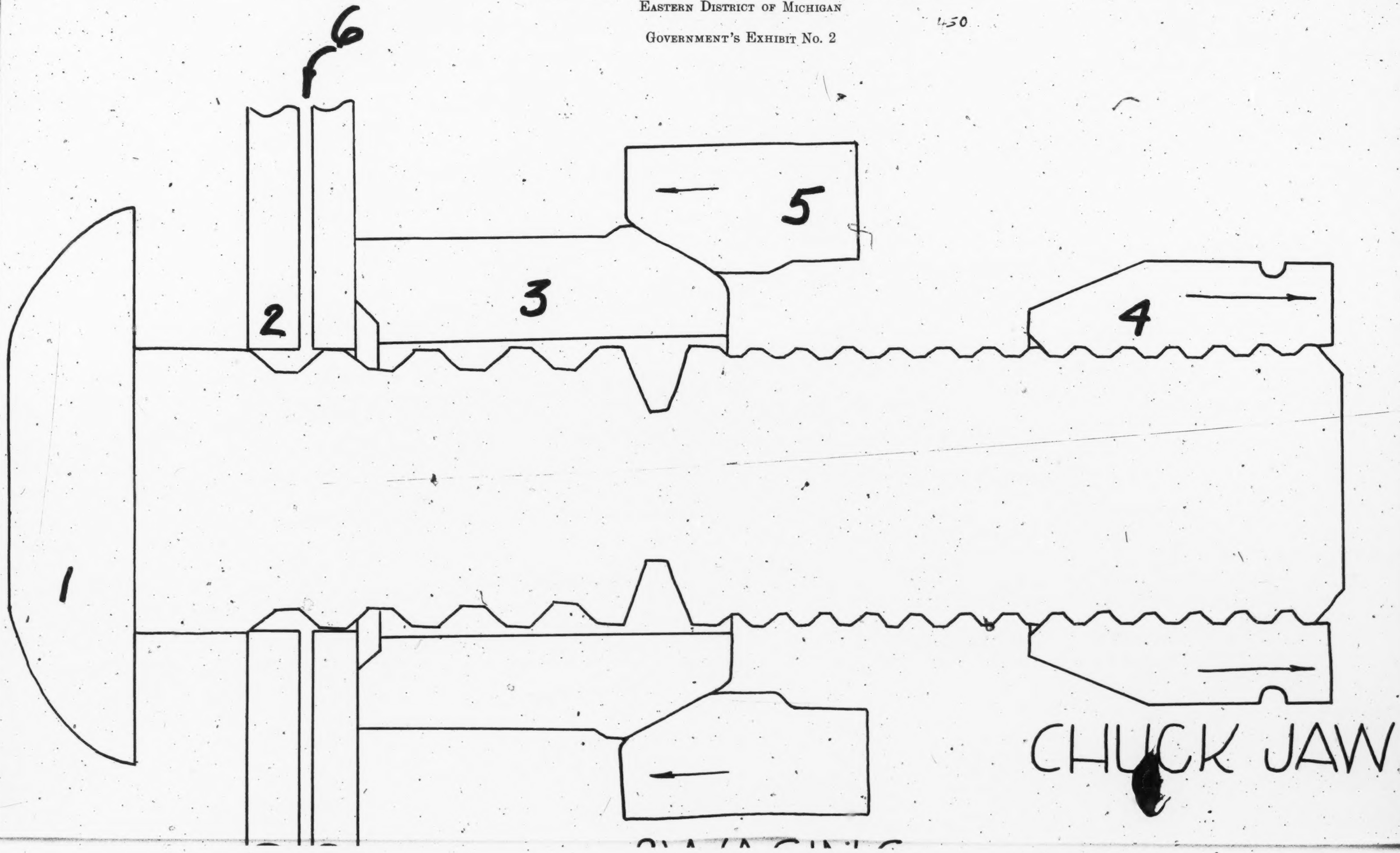
LOCKBOLT PIN



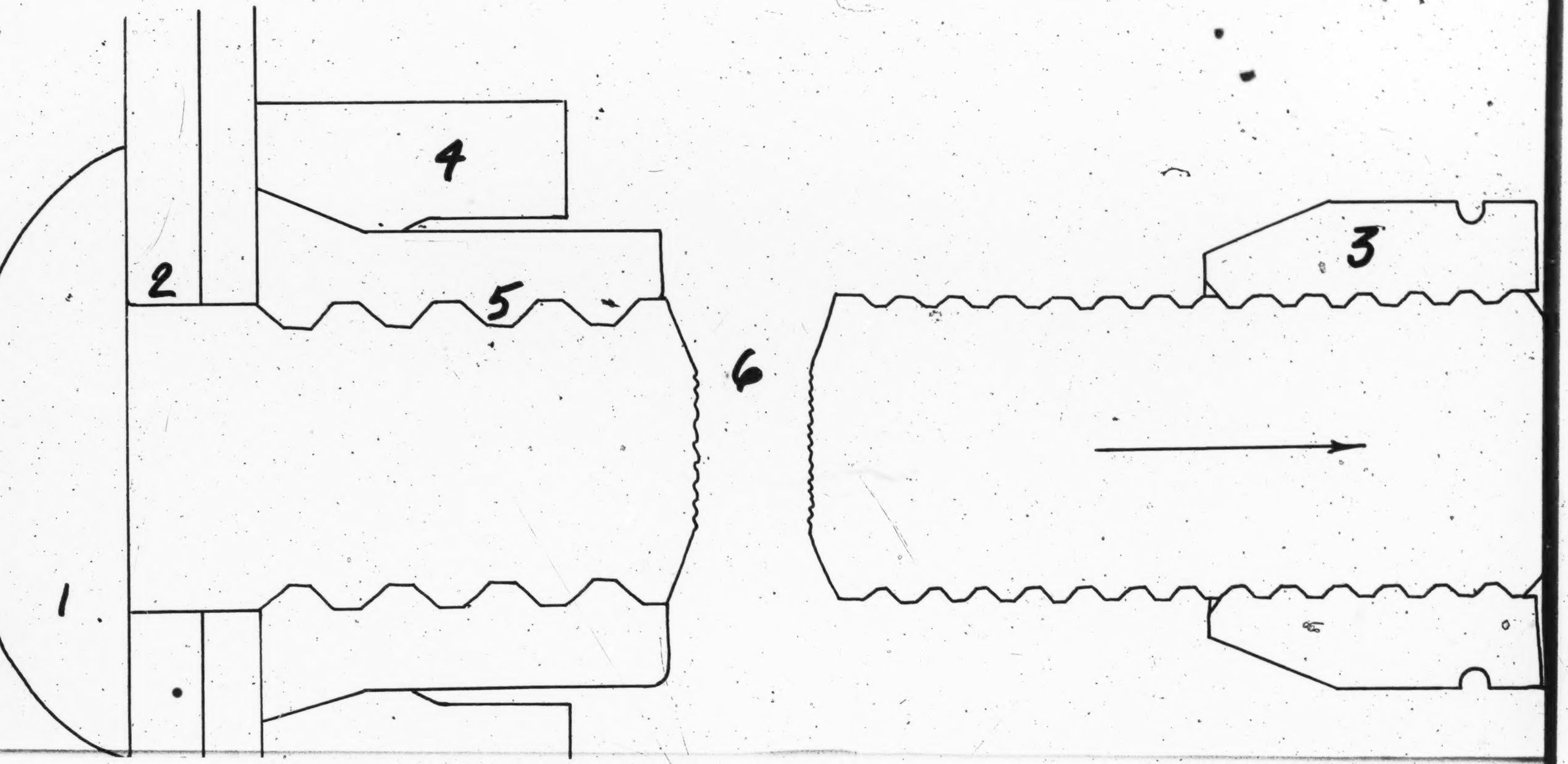
1. HEAD
2. SHANK
3. LOCKING GROOVES
4. PULL GROOVES
5. PIN TAIL

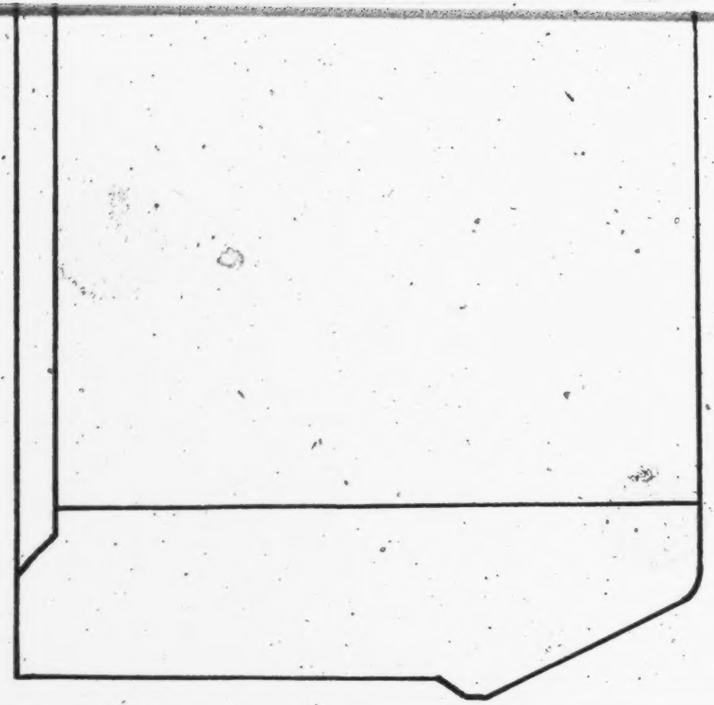
[fol. 1048]. IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 2



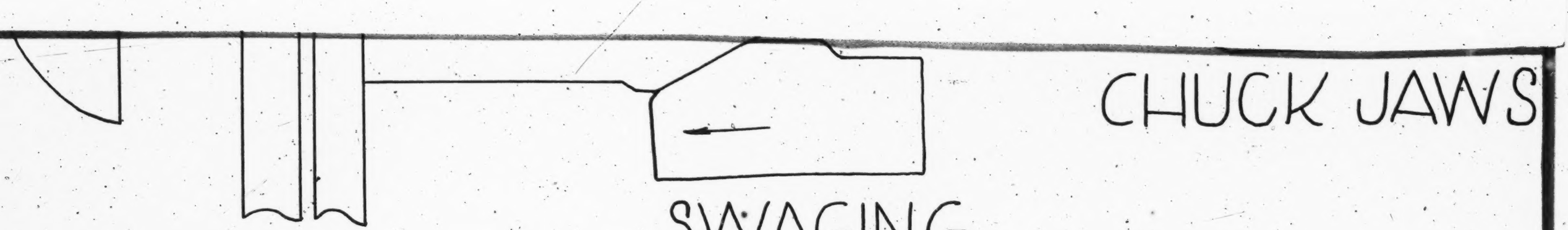
GOVERNMENT'S EXHIBIT No. 3 451





COLLAR

4. PULL GROOVES
5. PIN TAIL
6. BREAKNECK GROOVE
7. BEAD



LOCKBOLT DRIVING CYCLE

LOCKBOLT INSTALLED

[fol. 1050] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 8

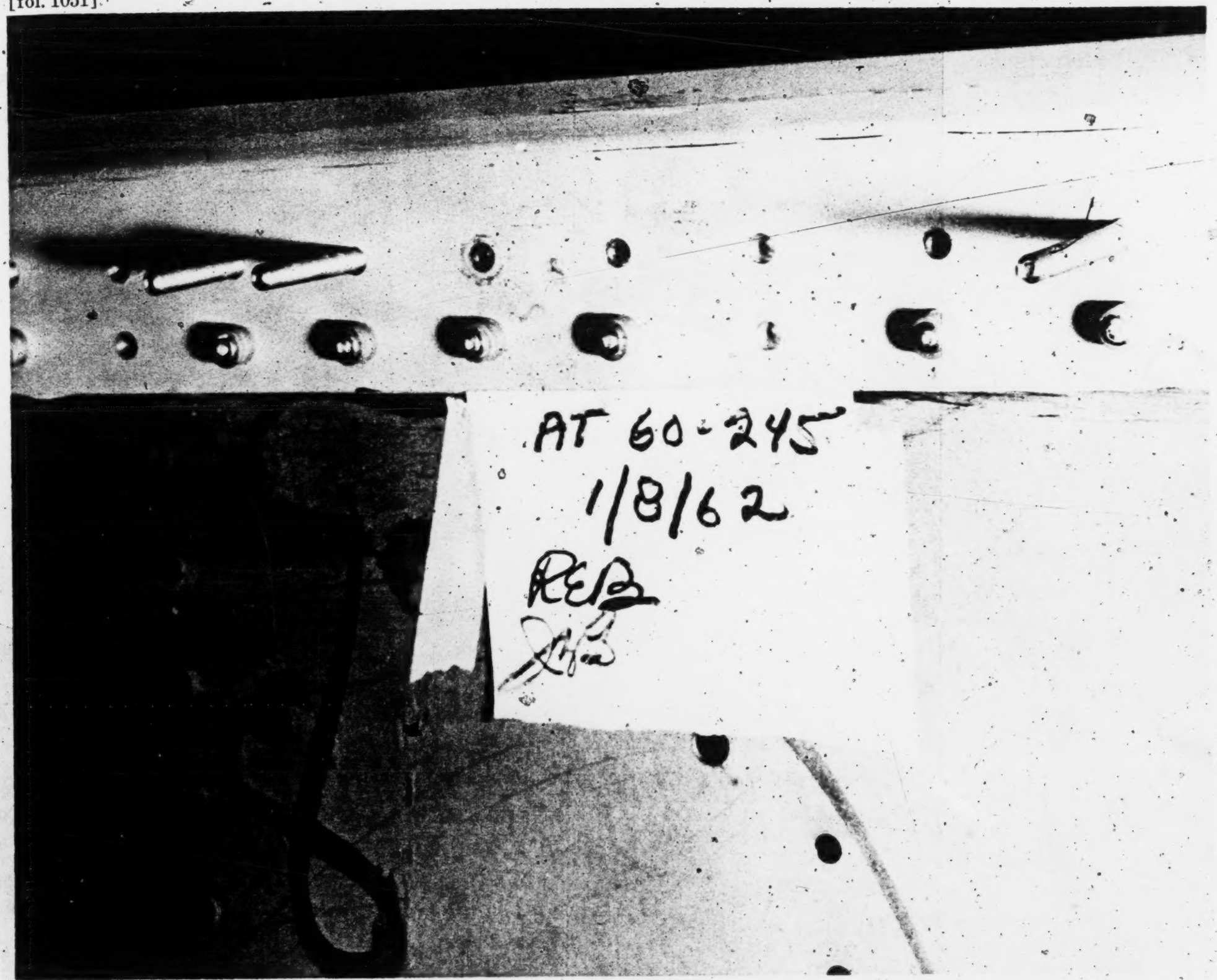
Photo # 1

Description: Lock Bolts in Drilled Holes

Info: Photograph taken at Lockheed Aircraft Corp., Marietta, Ga., on 1/8/62 by SAS Robert E. Byrnes and John L. Boyle.

At File # 60-245.

See opposite ➡


AT 60-245
1/8/62

[fol. 1052] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT NO. 10

Photo # 3

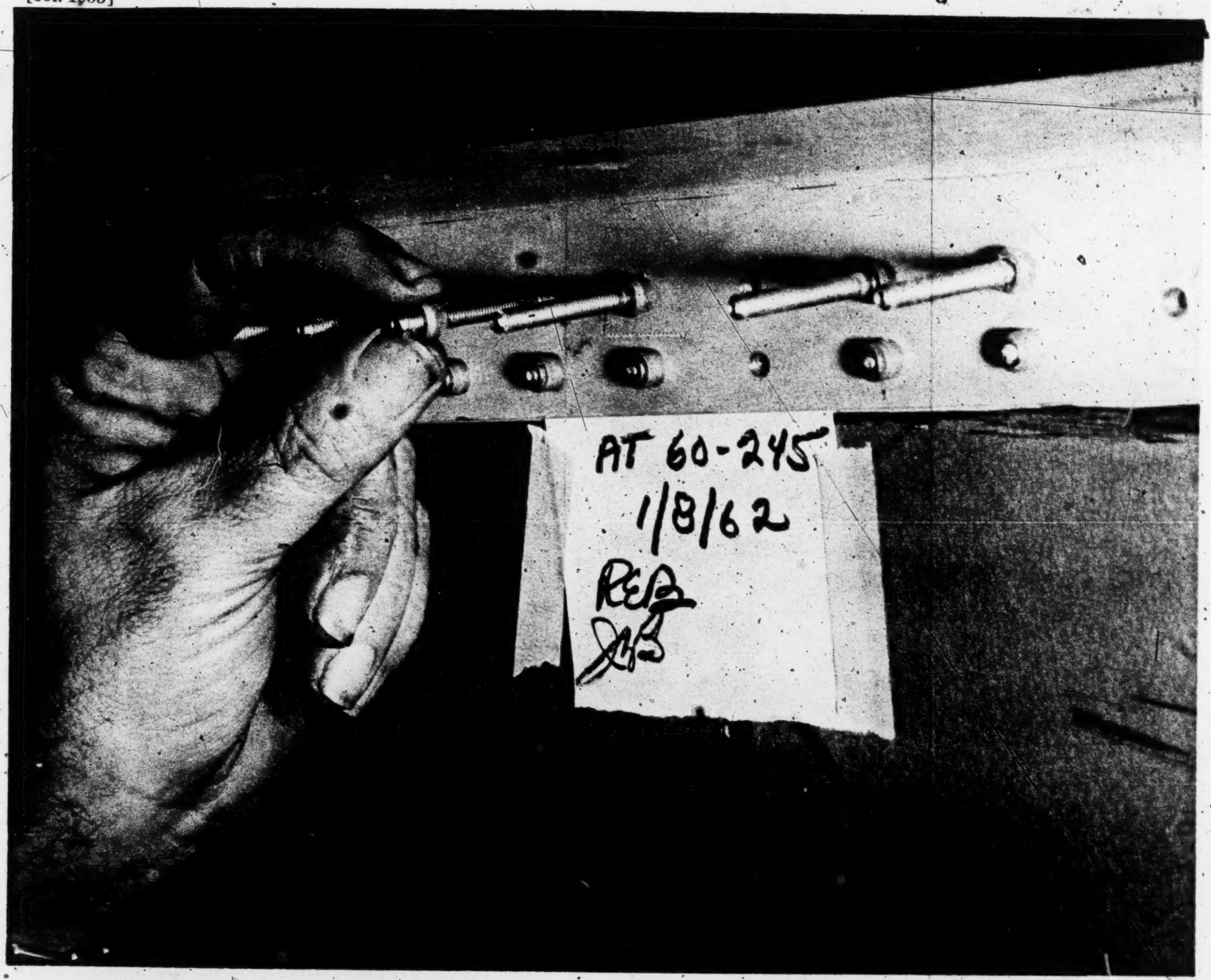
Description: Bolts with Lockbolt Collars

Info: Photograph taken at Lockheed Aircraft Corp., Marietta, Ga., on 1/8/62 by SAS Robert E. Byrnes and John L. Boyle.

At File # 60-245.

See opposite ➡

[fol. 1053]



[fol. 1054] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 11

Photo #4

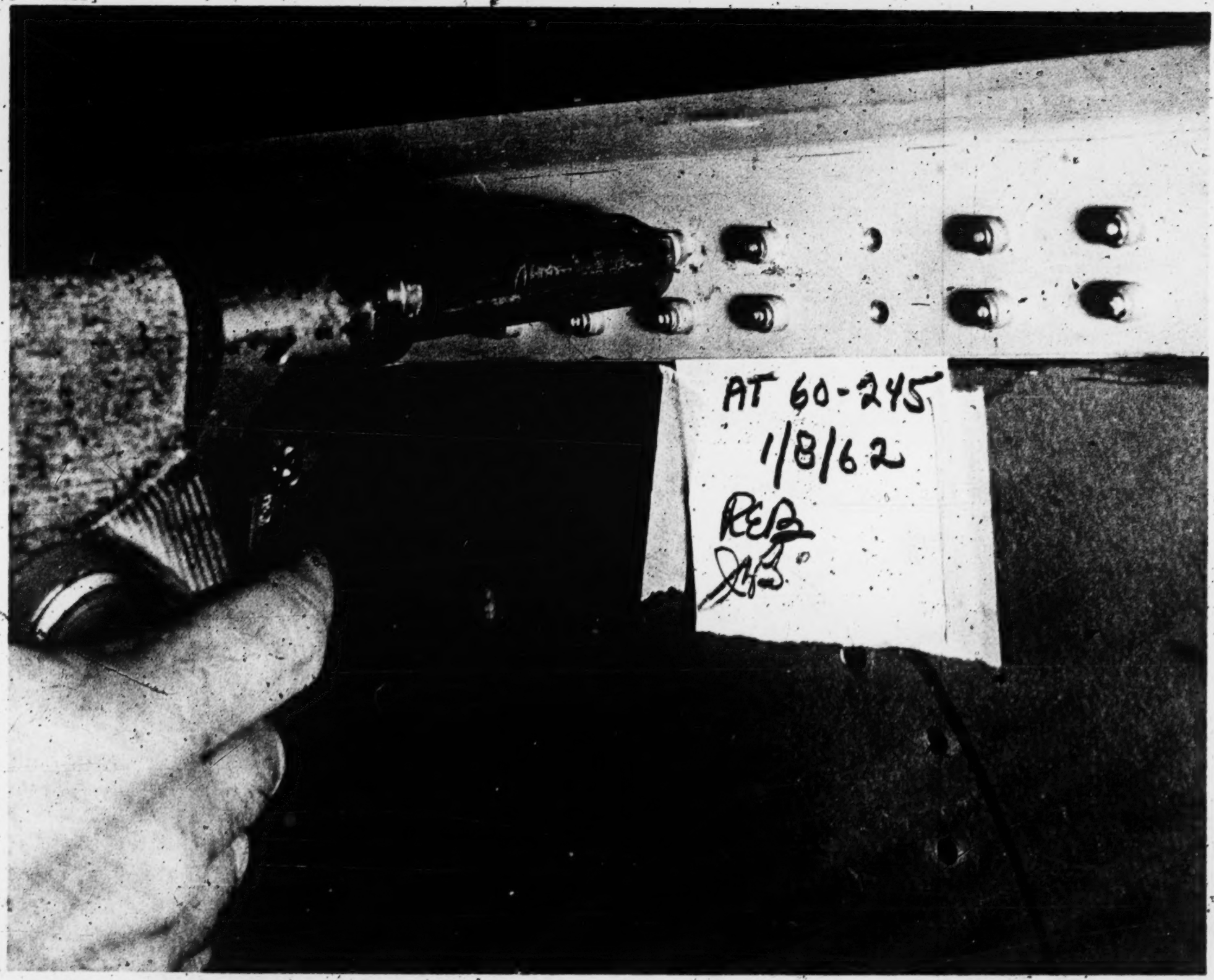
Description: Swadging Collars on Bolts

Info: Photograph taken at Lockheed Aircraft Corp., Marietta, Ga., on 1/8/62 by SAS Robert E. Byrnes and John L. Boyle.

At File # 60-245.

See opposite ➡

[fol. 1055]



[fol. 1056] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 13

Photo # 6

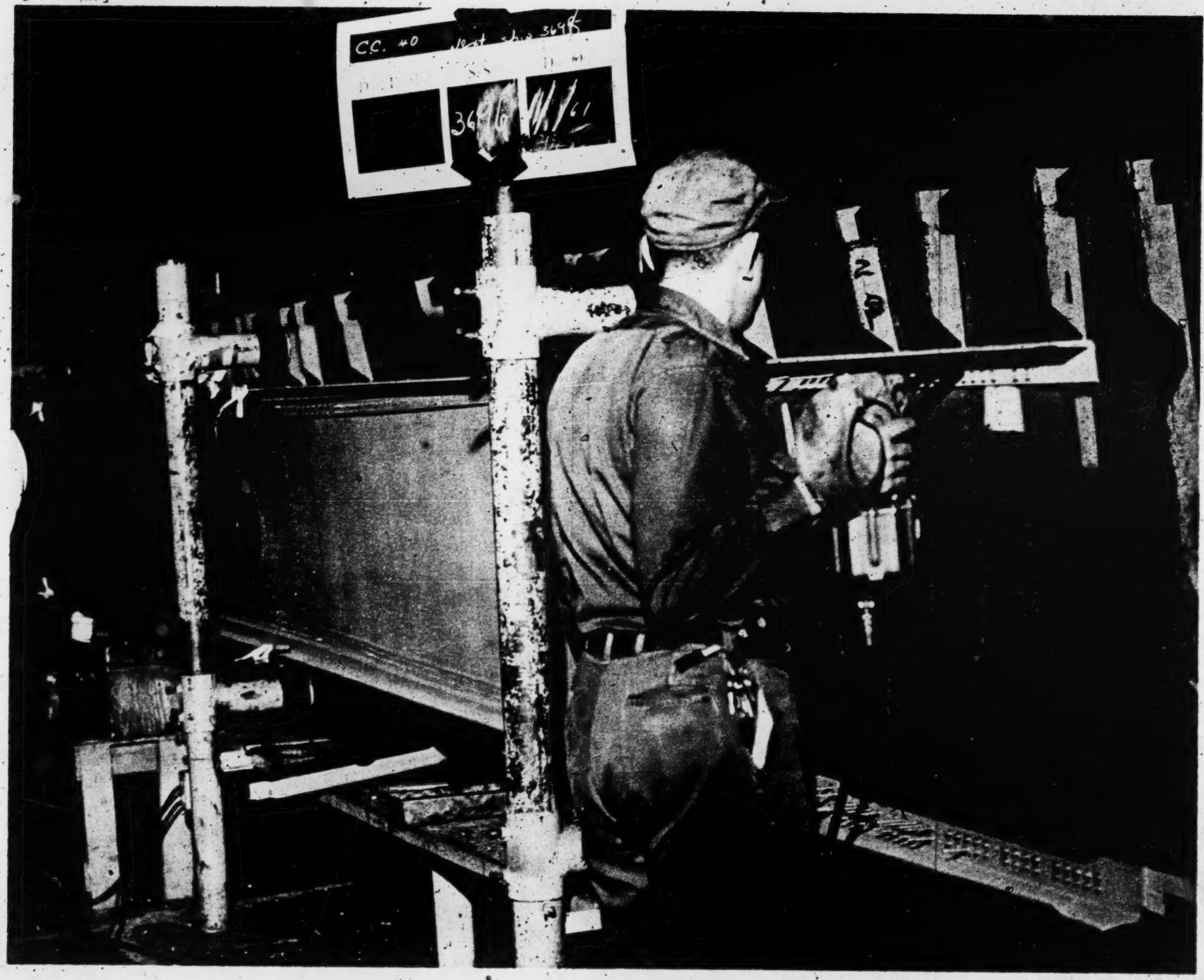
Description: Installation of Lockbolts in Wing Section

Info: Photograph taken at Lockheed Aircraft Corp., Marietta, Ga.. on 1/8/62 by SAS Robert E. Byrnes and John L. Boyle.

At File # 60-245.

See opposite ➞

[fol. 1057]



[fol. 1058] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 14

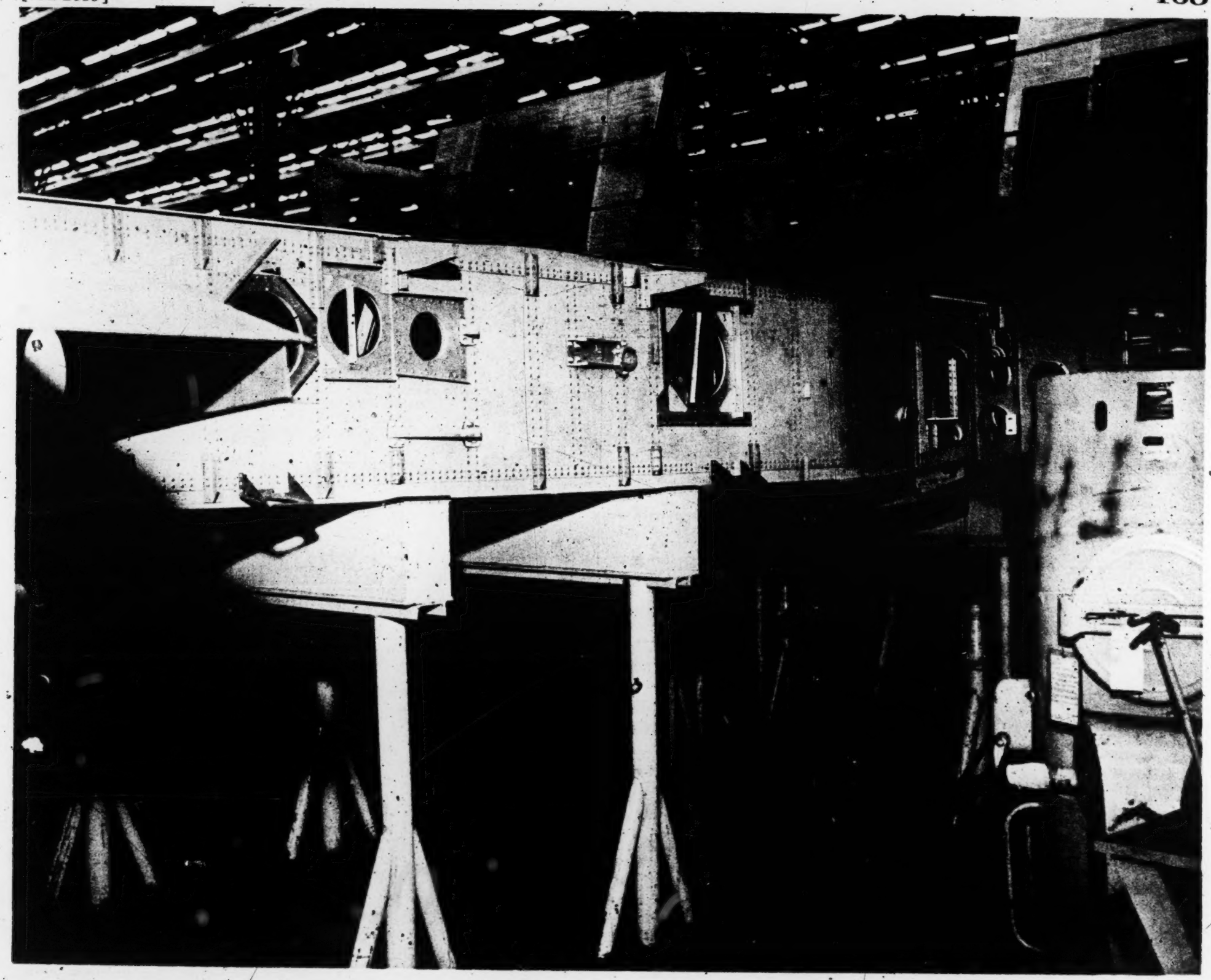
Photo # 7

Description: Rear Beam—Center Wing Section

Info: Photograph taken at Lockheed Aircraft Corp., Marietta, Ga., on 1/8/62 by SAS Robert E. Byrnes and John L. Boyle.

At File # 60-245.

See opposite ➡



[fol. 1060] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 15

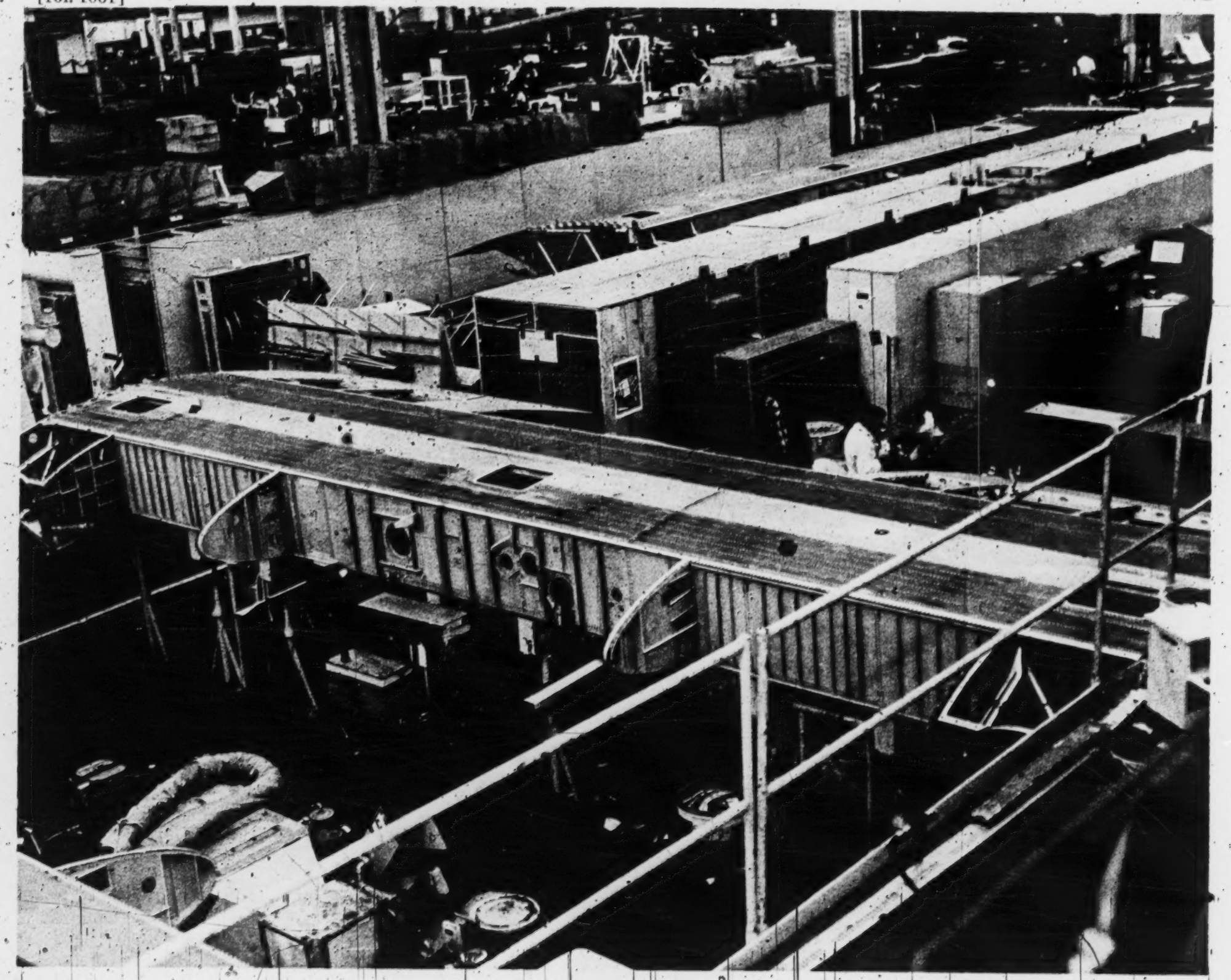
Photo # 8

Description: Center Wing Section—Front Beam Showing

Info: Photograph taken at Lockheed Aircraft Corp., Marietta, Ga., on 1/8/62 by SAS Robert E. Byrnes and John L. Boyle.

At File # 60-245.

See opposite ➡



[fol. 1062] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 16

Photo # 9

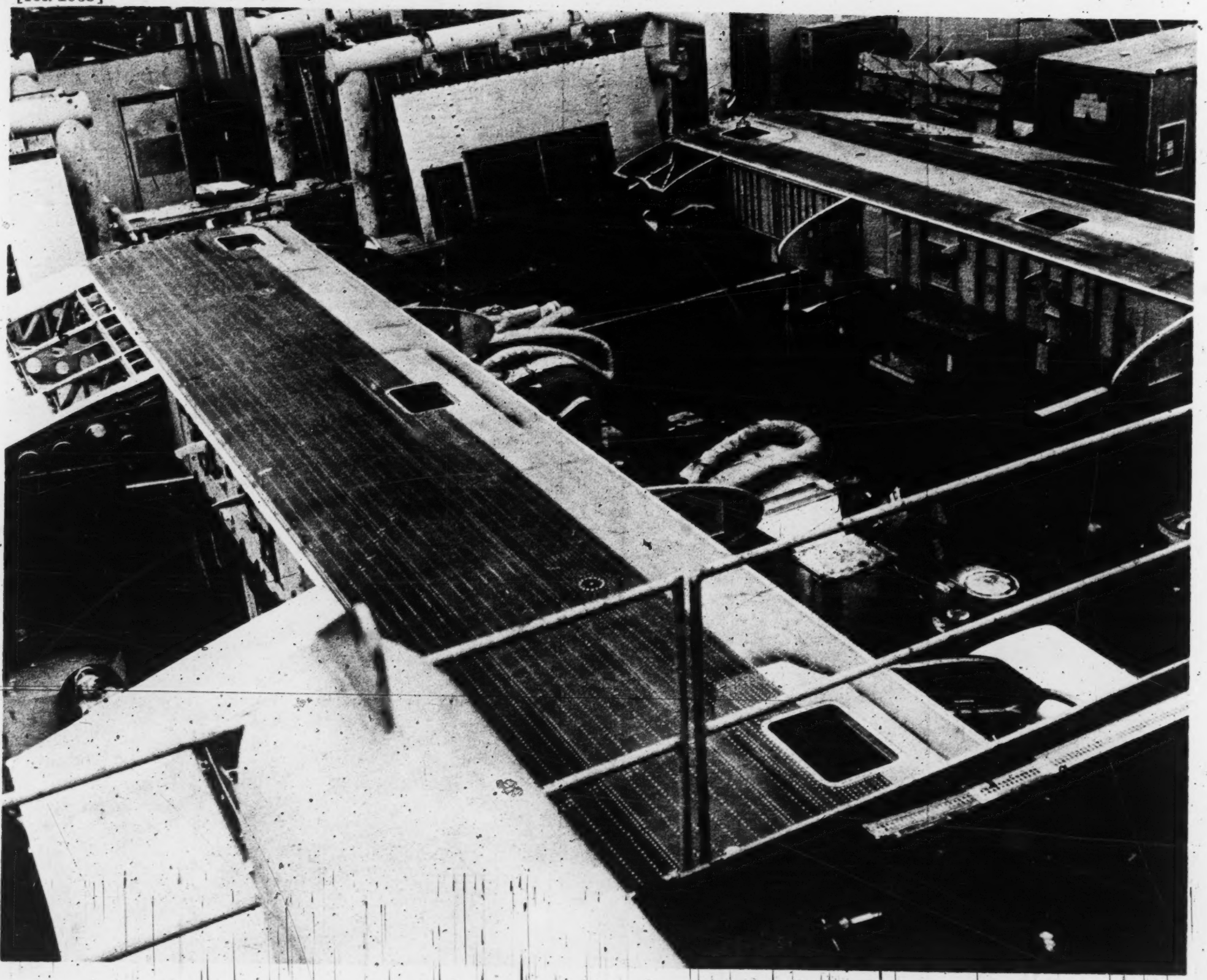
Description: Center Wing Section

Info: Photograph taken at Lockheed Aircraft Corp., Marietta, Ga., on 1/8/62 by SAS Robert E. Byrnes and John L. Boyle.

At File # 60-245.

See opposite ➡

[fol. 1063]



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PAGE

[fol. 1064] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

GOVERNMENT'S EXHIBIT No. 17

September 3, 1954

AGREEMENT

This agreement, made at Detroit, Michigan, this 14th day of September, 1954, between Huck Manufacturing Company, a corporation of Michigan, having its principal place of business at 2480 Bellevue Avenue, Detroit, Michigan (hereinafter referred to as "Huck"), and Townsend Company, a corporation of Pennsylvania, having its principal place of business at the Borough of Fallston, Beaver County, Pennsylvania (hereinafter referred to as "Townsend");

Witnesseth:

Whereas, Huck is the owner of the following United States Letters Patent and application for Letters Patent relating to lockbolt devices which are two-part fastening devices including a pin and collar, and in which the collar is swaged into locking grooves in the pin simultaneously with the setting of the fastener, such devices being hereinafter referred to as "lockbolt devices":

Patent No. 2,114,493, granted 4-19-38 for "Rivet and Rivet Setting." Patent No. 2,527,307, granted 10-24-50 for "Rivet and Method of Riveting" Patent No. 2,531,048, granted 11-21-50 for "Fastening Device" Patent No. 2,531,049, granted 11-21-50 for "Fastening Device" Application Serial No. 378,897, filed 9-8-53, for "Lockbolt Collar" Application Serial No. 427,719, filed May 5, 1954, for "Lockbolt Construction"

Whereas, Huck is engaged in the manufacture and sale of said lockbolt devices covered by said Letters Patent;

Whereas, Townsend has or will obtain the manufacturing and sales facilities for the manufacture and sale of said lockbolt devices; and

Whereas, Townsend desires a license to manufacture and sell such lockbolt devices and Huck is desirous of licensing

Townsend for the manufacture and sale of such lockbolt devices;

[fol. 1065] Now, Therefore, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed by and between the parties hereto as follows:

1. Huck hereby grants to Townsend a nonexclusive right and license under the aforesaid United States Letters Patent and application for Letters Patent, including Letters Patent and applications for Letters Patent on improvements on said lockbolt devices and substitutes therefor of the same type of lockbolt devices, to manufacture, use and sell lockbolt devices covered by the claims in said Letters Patent and any Letters Patent that may issue on said application for Letters Patent, and to practice the methods claimed therein. This license also applies to devices covered by any renewals, continuations, divisions of, or substitutes for, said applications for Letters Patent, and also any reissues or extensions of any of said Letters Patent.

2. Townsend agrees to pay to Huck a royalty of five percent (5%) on the net selling price of all lockbolt devices manufactured and sold by Townsend which are covered by any claim of any of the Letters Patent licensed herein. By "net selling price" the parties hereto mean the net selling price of lockbolt devices charged by Townsend, less all discounts allowed and taken.

3. Townsend shall keep proper books of account showing sales of lockbolt devices subject to royalty under this agreement, and agrees to report to Huck by the twentieth of each month the lockbolt devices sold by it during the preceding month, giving in such report the dollar amount sold [fol. 1066] during the month being reported. Lockbolt devices shall be considered sold when billed out or, if not billed out, when delivered or paid for before delivery. In computing sales of lockbolt devices, credit shall be given for returned lockbolt devices, and lockbolt devices which are given out as samples without charge to the customer shall not be subject to royalty.

4. Within twenty (20) days following the last day of February, May, August and November, Townsend will submit a written statement giving the total sales of lockbolt devices subject to royalty under this agreement for the

quarter being reported, and accompany such quarterly report with payment of the royalty then due.

5. Huck shall have access to the books and records of Townsend at all reasonable times to check the amount of sales of lockbolt devices made hereunder by Townsend from time to time, provided, however, that Townsend may, at its election, substitute for its examination a certificate of a mutually agreed upon firm of certified public accountants as to the amount of said sales and as to any other figures that will determine the amount of royalties payable thereon. Huck will not require an examination or such certified statement more often than once a year.

6. In the event that Townsend fails to comply with the terms of reports and royalty payment specified herein, and so often as the same shall happen, or breaches any other material provisions of this agreement, Huck may, at its option, by giving sixty (60) days' notice in writing, specifying the breach complained of, terminate this agreement and [fol. 1067] the license granted hereby, provided, however, that if the breach complained of shall be corrected by Townsend within thirty (30) days after the mailing of said notice, then this agreement shall remain in full force and effect.

7. It is agreed that, for the first year of this agreement, no minimum royalties are required. However, beginning with the second year of this agreement, computed from the anniversary date hereof, in the event that Townsend has not paid to Huck an amount of Fifteen Thousand Dollars ($15,000) for the second year and Twenty-Five Thousand Dollars ($25,000) for each succeeding year thereafter in earned or unearned royalties, then Huck may, at its option, terminate this license by notice as provided in Paragraph 6.

8. Townsend hereby grants to Huck a nonexclusive, royalty-free license, with the right to sublicense on any improvements on said lockbolt devices made or acquired by Townsend during the life of this agreement coming within the claims of the licensed patent, or lockbolt devices of the same type which are substitutes for the lockbolt devices licensed herein by Huck.

9. Townsend agrees to use its best efforts to provide the required facilities and to manufacture and sell said lockbolt devices in sizes up to at least 9/16 inch pin diameter.

10. For lockbolt devices sold by Townsend as Huck equals with pin diameter up to 3/8 inch, Townsend agrees to maintain Huck's quality for full equivalence in shear, tension and fatigue, for aircraft shear and tension allowables as defined or as may be defined by ANC5 Manual and for commercial lockbolt devices typical strength properties defined in Huck-published commercial lockbolt engineering bulletins, which Huck agrees to supply to Townsend.

[fol. 1068] 11. Townsend agrees to suitably identify the lockbolt devices as manufactured and sold by it to distinguish from the lockbolt devices manufactured and sold by Huck, the manner of so distinguishing the lockbolt devices to be mutually determined hereinafter.

12. Recognizing that Huck has a considerable investment in facilities for the manufacture and sale of the licensed products and has, over the past year, spent considerable monies in the development and promotion of said products and, further recognizing that Townsend will be required to expend a considerable amount of money to provide the facilities required for its entering into the manufacture and sale of the lockbolt devices herein licensed:

a. Huck agrees that, for the first two years of the present license, the license herein granted to Townsend shall be exclusive to Huck and Townsend for the lockbolt devices offered for sale by Huck, unless during that period of two years a national emergency shall require the production of lockbolt devices for United States Governmental use which cannot be satisfied by the combined facilities of Huck and Townsend; then Huck may grant a license to another source in the event that it is requested so to do by a United States Government agency.

b. Townsend agrees during said two-year period to maintain at least Huck's prices on lockbolt devices manufactured and sold by Huck according to Huck's published current price schedules as changed from [fol. 1069] time to time and computed according to Huck's published Standard Pricing Policy, which will be furnished Townsend by Huck, except that Townsend's prices shall be computed F.O.B. Townsend, New Brighton, Pennsylvania.

13. Townsend may cancel this agreement at any time upon six (6) months' previous notice in writing to Huck. In the event of termination by Townsend or Huck as provided in this agreement, Townsend may dispose of its inventory on hand or in process, subject to the royalty provisions of paragraph 2.

14. Notice as herein provided shall mean the placing of the notice in the mails, registered-return, postage prepaid, to the party being notified at the address above given, or at such other address designated by the parties hereto.

15. The license herein granted is nontransferable without the written consent of Huck first had and obtained, except to the successors of the entire fastener business of Townsend, and this agreement shall be binding upon, and inure to the benefit of, any such transferee of Townsend and the successors and assigns of Huck.

16. Unless previously terminated in accordance with the terms hereof, this agreement and the license herein granted shall extend for the full term of the United States Letters Patent which are or may be included in this agreement, and shall terminate at the expiration of the last to expire of said patents.

17. Huck agrees to furnish Townsend such drawings and product specifications as it may have for the lockbolt devices licensed herein, and for lockbolt devices having pin sizes up to and including 3/8 inch diameter, it being understood [fol. 1070] that Huck does not have such specifications for lockbolt devices of larger pin diameter. Huck agrees to furnish Townsend with reasonable aid, but at no expense to Huck, in its know-how required for the production of the licensed lockbolt devices, and Townsend likewise agrees to provide Huck with reasonable aid, but at no expense to Townsend, in know-how that it may develop with respect to the production of the licensed lockbolt devices.

18. The license granted to Townsend in paragraph 1 hereof shall commence at the date of this agreement with respect to all lockbolt devices, except those manufactured for sale for use in aircraft, and such license for use in aircraft shall not begin for nine (9) months from the date hereof.

19. Townsend agrees to properly affix the necessary statutory patent notices to all of the containers within which